

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

IN RE: AQUEOUS FILM- FORMING FOAMS PRODUCTS LIABILITY LITIGATION	MDL No. 2:18-mn-2873-RMG ORDER
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The AFFF multi-district litigation now includes more than 20,000 cases, the great bulk of which raise individual personal injury claims. The Court has adopted a bellwether program for personal injury claims, CMO 26, in which Plaintiffs assert that exposure to PFAS from an AFFF source in drinking water is the proximate cause of four identified diseases: Kidney Cancer, Testicular Cancer, Hypothyroidism/Thyroid Disease, and Ulcerative Colitis. (Dkt. No. 3080 at 2). The Court is informed that the diseases covered by CMO 26 represent a small minority of the pending personal injury cases in the MDL.

The time has arrived for the parties to address the balance of the individual personal injury cases and to determine which of these cases have or do not have merit. The Court directs the parties to meet and confer and to propose a CMO within 60 days of this order which sets forth a plan to address the individual personal injury cases that do not fall within CMO 26. The proposed CMO shall include:

1. A designated date for Plaintiffs to identify any diseases not addressed in CMO 26 that they assert are associated with exposure to an AFFF source in drinking water;
2. A designated date for the parties to produce all peer reviewed articles which support or dispute an association of any diseases not addressed in CMO 26 with exposure to an AFFF source in drinking water;
3. A plan for a Science Day to allow the parties to present a limited number of experts to the Court to address the claimed association of diseases not addressed in CMO 26 to exposure to

an AFFF source in drinking water. This plan should be modeled on the Court’s July 24, 2019 Order (Dkt. No. 157). This includes the provision that “the presentations and questioning will be under the control and direction of the Court” and “counsel will not be involved in making presentations or questioning the experts.” (*Id.* at 1);

4. A plan for selecting one or more bellwether cases to address individual personal injury cases asserting an association of certain diseases not addressed in CMO 26 with exposure to an AFFF source in drinking water. The plan should follow generally the format set forth in CMOs 26, 26.A, and 26.B. (Dkt. Nos. 3080, 3753, 4134); and

5. A plan for addressing *Daubert* and dispositive motions regarding this class of individual personal injury cases.

If the parties are not able to jointly recommend a CMO regarding this class of individual personal injury cases, the PEC and DCC shall each submit its own proposal.

AND IT IS SO ORDERED

s/ Richard Mark Gergel
Richard M. Gergel
United States District Judge

December 5, 2023
Charleston, South Carolina